

## **Board of Contract Appeals**

General Services Administration  
Washington, D.C. 20405

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August 11, 2005

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GSBCA 16640-RELO

In the Matter of JOHN L. PIPES

John L. Pipes, Manassas, VA, Claimant.

Lani Pounders, Accounting Technician, Relocation Services, Federal Aviation Administration, Oklahoma City, OK, appearing for Department of Transportation.

NEILL, Board Judge.

Claimant in this case, Mr. John L. Pipes, is an employee of the Federal Aviation Administration (FAA). He asks that we review his agency's denial of a claim he has made for reimbursement of the cost of a survey which he contends he paid in conjunction with the purchase of a residence at his new duty station. Upon consideration of the agency's reasons for denying the claim, we conclude that the claim is a valid one and should be paid.

### Background

Mr. Pipes has submitted the settlement sheet for the purchase of a residence near his new duty station. Line 1301 on page two of the settlement sheet indicates that the company from which Mr. Pipes purchased his new home paid \$150 in advance of settlement for a survey of the property. On page one of the settlement sheet, line 409 shows the cost of the survey charged to the buyer at settlement while line 109 on the same page shows that the seller is reimbursed for this cost.

The explanation given to Mr. Pipes by an agency employee for why his claim for reimbursement of the cost of the survey was denied was that the reference to the seller's payment of the survey cost on line 1301 on page two of the settlement sheet superseded any

entries on the first page indicating that the cost of the survey was ultimately transferred to the claimant at settlement.

To explain the various entries on pages one and two of the settlement sheet, Mr. Pipes secured a letter from his lender. The lender explains that, although the builder/seller pays for a survey in advance of closing, the survey fee is nonetheless considered a buyer's cost per the terms of the builder's contract with the buyer. For that reason, page one of the settlement sheet shows the seller being reimbursed for the fee at the buyer's expense.

The agency found the explanation offered by Mr. Pipes insufficient and advised him that an amended settlement sheet would have to be submitted before it would reconsider his claim.

### Discussion

The agency cites two provisions in the Federal Aviation Administration Travel Policy (FAATP) in support of its position. They read:

**How much is my allowance for expenses incurred in connection with the purchase of my new residence?**

FAA will pay the actual allowable expenses paid by you and/or a member(s) of your immediate family to purchase your new residence not to exceed 5 percent of the lesser of:

Your pro-rata share of the actual purchase price of the residence; or

\$500,000.

FAATP 302-50.201 (1998).

**Will FAA pay expenses incurred in connection with residence transactions that are paid by a person other than me or a member of my immediate family?**

No.

*Id.* 302-50.203.

The agency also cites two decisions of this Board, *John P. Rydzik*, GSBCA 16433-RELO, 05-1 BCA ¶ 32,909, and *Nicholas A. Mendaloff*, GSBCA 14542-RELO, 98-2 BCA ¶ 29,983. The cases are cited in support of the proposition that reimbursement is limited to expenses actually incurred and paid by the transferred employee. These cases do indeed stand for the proposition as stated. Nevertheless, we find the agency's reading of those cases and the two FAATP provisions cited to be excessively literal and unduly restrictive. Our decisions and the FAATP provisions set out above speak to *ultimate* liability for a specific cost. The fact that someone or some entity other than the transferred employee responds on a temporary basis before settlement for an expense incurred in connection with a residence transaction does not preclude the employee from reimbursement if, at settlement, the cost is clearly assessed to the employee.

In both the *Rydzik* and *Mendaloff* decisions, we refer to the general rule of looking to the settlement sheet itself as the most reliable measure of the actual expenses incurred in connection with the transferred employee's real estate transactions. In this case, it is clear on the face of the settlement sheet itself that the \$150 survey fee, initially paid by claimant's builder, was treated as a buyer's or borrower's expense. The settlement sheet expressly provides that the ultimate cost of the survey was assessed against Mr. Pipes at closing and that the builder or seller was reimbursed for having initially paid the survey fee. This convinces us that the cost was actually paid by the claimant.

Similarly, we are not troubled by the fact that it was the builder who initially incurred the cost of the survey. The letter provided by claimant's lender explains that this was done per the terms of the contract Mr. Pipes had with his builder and that it was done with the understanding that the cost of the survey would be treated as a buyer's cost. The cost was actually incurred, therefore, by someone clearly working on claimant's behalf.

As apparently an alternative argument in support of its denial of Mr. Pipes' claim, the agency cites to a third decision of this Board, *Doris L. Starkes*, GSBCA 16509-RELO, 05-1 BCA ¶ 32,876. In that case, we denied a transferred employee's claim for reimbursement of certain closing costs she paid for the buyer on the occasion of the sale of the employee's home at her old duty station. The claim was denied on the ground that the claimant had not provided persuasive evidence that it was customary in her locale for the seller to pay these costs. The argument that the agency apparently wishes to make in citing to *Starkes* is that Mr. Pipes' responsibility for the survey fee was simply the result of his negotiations with his builder and is not based on the customary practice of the locale where his newly purchased home is located.

In a case such as this, we require very little to demonstrate that it is customary for home buyers such as Mr. Pipes to pay for survey costs when seeking financing for the

purchase of a new home. Mr. Pipes' statement that the survey was required by his lender as a condition to purchasing his home is enough to convince us that it would be customary for him to pay this cost. We note that survey costs are recognized as a typical mortgage-related cost. *E.g.*, Federal Reserve Board, *A Consumer's Guide to Mortgage Settlement Costs*, available at <http://www.federalreserve.gov/pubs/settlement> (last visited Aug. 11, 2005).

### Decision

The record for this case readily convinces us that Mr. Pipes did actually incur and pay a survey fee of \$150. His claim for reimbursement of this cost should, therefore, be paid.

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EDWIN B. NEILL  
Board Judge